

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P. O. Box 30754  
LANSING, MICHIGAN 48909

November 13, 2008

**VIA HAND-DELIVERY**

Clerk of the Court  
Ingham County Circuit Court  
Courthouse  
Mason, MI 48854

Dear Clerk:

RE: *Commissioner v Ultimed HMO of Michigan, Inc. (in Liquidation)*;  
Ingham County Circuit Court Case No. 05-1472-CR

Liquidator's Petition for an Order Approving the Liquidator's Claim Recommendations, Establishing Priority of Distribution of Claims, and Authorizing the Distribution of Liquidation Estate Assets, Notice of Hearing, and Proof of Service are enclosed for filing in the above-entitled cause, along with a state check in the amount of \$20.00 for the motion fee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher L. Kerr".

Christopher L. Kerr  
Assistant Attorney General  
Insurance and Banking Division  
(517) 373-1160

CLK:cs  
Enc.

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801 000040942

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL

11/05/2008

TWENTY AND 0/100  
PART TO THE ORDER OF

INGHAM COUNTY CIRCUIT COURT

MOTION FEE  
WATTERS V ULTIMED HMO OF MI  
CHRISTOPHER KERR, INSURANCE & BANKING

TO THE TREASURER  
STATE OF MICHIGAN  
LANSING, MICHIGAN 48922

74-70  
724

VOID IF DOLLAR AMOUNT EXCEEDS \$5000.00

REVERSE IMAGE OF NUMBER PRINTED ON BACK MUST APPEAR HERE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

KENNETH M. ROSS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
ECONOMIC GROWTH, OFFICE OF FINANCIAL  
AND INSURANCE REGULATION,

Petitioner / Liquidator,

Case No. 05-1472-CR

Hon. William E. Collette

v.

ULTIMED HMO OF MICHIGAN, INC.,  
a Michigan health maintenance organization,

**IN LIQUIDATION**

Respondent.

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**NOTICE OF HEARING**

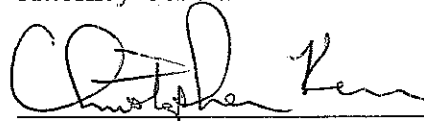
To: Clerk of the Court  
Interested Parties

PLEASE TAKE NOTICE that the attached Liquidator's Petition for an Order Approving the Liquidator's Claim Recommendations, Establishing Priority of Distribution of Claims, and Authorizing the Distribution of Liquidation Estate Assets filed by the Petitioner, Kenneth M. Ross, Commissioner, Michigan Department Of Labor And Economic Growth,

Office of Financial and Insurance Regulation, will be heard by the Honorable William H. Collette on Wednesday, December 10, 2008, at 11:00 a.m., or as soon thereafter as counsel can be heard.

Respectfully submitted

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr", written over a horizontal line.

Christopher L. Kerr (P57131)  
Assistant Attorney General  
Michigan Department of Attorney General  
Insurance & Banking Division  
P.O. Box 30754  
Lansing, Michigan 48909

Dated: November 13, 2008

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

KENNETH M. ROSS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
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**IN LIQUIDATION**

Respondent.

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E. John Blanchard (P28881)  
Christopher L. Kerr (P57131)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Insurance & Banking Division  
Attorneys for Petitioner / Liquidator  
Kenneth M. Ross, Commissioner of OFIR  
P O. Box 30754  
Lansing, Michigan 48909  
Telephone: (517) 373-1160

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**LIQUIDATOR'S PETITION FOR AN ORDER**  
**APPROVING THE LIQUIDATOR'S CLAIM RECOMMENDATIONS,**  
**ESTABLISHING PRIORITY OF DISTRIBUTION OF CLAIMS, AND**  
**AUTHORIZING THE DISTRIBUTION OF LIQUIDATION ESTATE ASSETS**

Kenneth M. Ross, Commissioner of the Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Regulation, and Court-appointed Liquidator for Ultimed HMO of Michigan, Inc. (the "Liquidator"), by and through his attorneys, Michael A. Cox, Attorney General of the State of Michigan, and Christopher L. Kerr, Assistant Attorney General, petitions this Court for an Order: (1) Approving the Liquidator's claim recommendations, pursuant to MCL 500 8143(2); (2) Establishing the priority of distribution of

claims from the liquidation estate, consistent with MCL 500.8142; and (3) Authorizing the Liquidator to distribute liquidation estate assets to certain claimants, pursuant to MCL 500.8144.

In support of this Petition, the Liquidator states as follows:

### **BACKGROUND**

1. On April 10, 2006, this Court entered an Order placing Ultimed HMO of Michigan, Inc. ("Ultimed") into Liquidation. The Liquidation Order appointed Linda A. Watters, then-Commissioner of the Office of Financial and Insurance Services, as Liquidator for Ultimed. The Liquidation Order further appointed James Gerber and Janice Sylvertooth as Special Deputy Liquidators for Ultimed.

2. Effective February 22, 2008, Governor Granholm named Kenneth M. Ross Commissioner of the Office of Financial and Insurance Services. As Commissioner, Mr. Ross assumed the role of Liquidator for Ultimed. On February 1, 2008, Governor Granholm signed Executive Order 2008-02, which reorganized the Office of Financial and Insurance Services and changed its official name to the Office of Financial and Insurance Regulation ("OFIR"). Executive Order 2008-02 became effective on April 6, 2008.

3. The Liquidator has marshaled the assets of Ultimed, has adjudicated all claims belonging to classes to which the Liquidator currently proposes making a distribution, and is now in a position to finalize his claim recommendations and pay claims. The Liquidator therefore asks the Court to approve his claim recommendations, establish the priority for the payment of claims, and authorize the distribution of Ultimed Liquidation Estate assets to pay certain approved claims, as explained more fully below.

### **THE CLAIM DETERMINATION PROCESS**

4. The procedure for filing and determining claims in this liquidation proceeding was initially established by the Court in its April 10, 2006, Corrected Order for Liquidating

Receivership and Declaration of Insolvency of Ultimed HMO of Michigan, Inc. (the "Liquidation Order"). Exhibit A. The Liquidation Order required that all claims against the assets of Ultimed be made by filing claims in this liquidation proceeding. The Liquidation Order further provided that the deadline for the filing of claims "shall be six (6) months after the date that this Liquidation Order is entered, unless the Liquidator specifies a different claims-filing deadline in the Notice provided pursuant to MCL 500.8122(2)."

5. Consistent with the Liquidation Order, the Liquidator established a claim filing deadline of October 10, 2006, which was six (6) months after the date the Liquidation Order was entered.

6. Pursuant to MCL 500.8122, the Liquidator provided notice of the liquidation by sending a Notice of Court Order to Liquidate (the "Liquidation Notice") to all persons known or reasonably expected to have claims against Ultimed. Exhibit B. The Liquidation Notice required potential claimants to file with the Liquidator an also-enclosed Proof of Claim form on or before the October 10, 2006 claim filing deadline.

7. The Proof of Claim form required potential claimants to provide information supporting their claim(s), as provided by MCL 500.8136(1). Exhibit C. In addition, the Proof of Claim form again notified potential claimants of the October 10, 2006 claim filing deadline.

8. Together with the Liquidation Notice and Proof of Claim form, the Liquidator provided potential claimants Proof of Claim Instructions (the "Instructions"). Exhibit D. Pursuant to MCL 500.8135(1) and 500.8136(2), the Instructions required that all claims be submitted on the Proof of Claim form prescribed by the Liquidator.

9. The Instructions further provided that all claims would be adjudicated "in accordance with Ultimed's business rules contained in the provider manual, Wayne County

program guidelines, the Certificate of Coverage approved by [OFIR, then OFIS] on April 18, 2002, and the Order of Liquidation."

10. On August 9, 2006, this Court entered an Order Regarding Coverage of Platinum Health Insurance Plan Members' Health Care Claims. The Order established certain claims adjudication and member coverage rules to be used by the Liquidator in his administration of the Ultimed Liquidation Estate. Exhibit E.

11. Following the receipt of claims, the Liquidator reviewed and investigated all claims consistent with MCL 500.8143, the Instructions, and this Court's August 9, 2006 Order. The Liquidator responded to each claim through a Notice of Determination. Medical provider claimants were also sent a Claim Summary Report. Because Ultimed has separate claims processing systems for each line of business (Wayne County Pluscare, Wayne County Adult Benefit Waiver, and Platinum Health), each provider was mailed a separate Claims Summary Report for each of these lines of business.

12. Pursuant to MCL 500.8139(1), if the Liquidator denied a claim in whole or in part, the Liquidator gave written notice of the determination to the claimant or his or her attorney by first-class mail at the address shown in the Proof of Claim form or any updated address provided by the claimant.

13. Pursuant to MCL 500.8139(1) and (2), the Instructions provided an appeal process in cases where a claimant objected to the Liquidator's claim determination:

If there are objections to the Liquidator's "Proof of Claim" determination, the claimant must file an appeal with the Liquidator within sixty (60) days after the date the notice of claim determination is mailed. The appeal should include all additional information relevant to reconsideration of the "Proof of Claim." If the Liquidator does not alter her denial of the claim, the Liquidator shall ask the Court for a hearing as soon as practicable and shall notify the claimant not less than ten (10) nor more than thirty (30) days before the date of the hearing for Court determination of the claim.



14. Consistent with MCL 500.8139 and the Instructions, the Liquidator prohibited any claimant from pursuing an objection to the Liquidator's claim determination if the objection was not timely filed within sixty (60) days after the date of mailing of the notice of determination.

15. Consistent with MCL 500.8139 and the Instructions, the Liquidator responded to each objection regarding a claim determination by mailing to the claimant or his or her attorney by first-class mail at the address shown in the proof of claim (or any updated address) a letter stating the Liquidator's response to the objection.

16. Consistent with MCL 500.8139(2) and the Instructions, if the Liquidator did not alter his denial of a claim as a result of an objection, the claimant was required to advise the Liquidator in writing that the claimant maintained the objection and wished to pursue further Court review of the matter. In addition, the claimant was required to state the basis for the request for further review and also to provide any additional documentation not previously submitted in support of the claim.

17. Through the foregoing objection / appeals process, all objections were resolved and none of the Liquidator's claim determinations were submitted to the Court for final determination.

18. The Liquidator requests the Court to formally ratify and approve the above-described process used by the Liquidator to adjudicate claims. Consistent with MCL 500.8122(2), MCL 500.8135, and the Instructions, the Liquidator further asks the Court to confirm by Order that the deadline for filing claims has expired and that the Liquidator need not accept any additional claims because doing so would prejudice the orderly administration of the liquidation.

## **ESTABLISHING PRIORITY OF DISTRIBUTION OF CLAIMS**

19. In addition, the Liquidator requests this Court to establish the following priority of distribution of claims from the Ultimed Liquidation Estate, pursuant to MCL 500.8142 and the Ingham County Circuit Court's interpretation of that statute in the HMO receivership proceedings involving The Wellness Plan (Case No. 03-1127-CR) and Michigan HMO Plans, Inc., d/b/a OmniCare Health Plan (Case No. 98-88265-CR):

- Class 1: The costs and expenses of administration of the Ultimed Liquidation Estate, including but not limited to legal and supervisory fees, the actual and necessary costs of preserving or recovering Ultimed's assets, compensation for all services rendered in the liquidation, and any necessary filing fees. MCL 500.8142(1)(a).
- Class 2: All claims under Ultimed policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. MCL 500.8142(1)(b). This class includes all claims by Ultimed members for reimbursement of covered medical expenses paid out-of-pocket. In addition, as the Ingham County Circuit Court has previously determined in both The Wellness Plan and OmniCare receivership proceedings, this class includes all claims by medical providers that provided covered goods and/or services to Ultimed members. There are no guaranty association claims in this liquidation.
- Class 3: Federal government claims. MCL 500.8142(1)(c). The Liquidator received no claims that fall within this class.
- Class 4: All claims against the insurer for liability for bodily injury, or for injury to or destruction of tangible property that are not under policies, together with certain types of employee claims. MCL 500.8142(1)(d). The Liquidator received no claims that fall within this class.
- Class 5: Claims of general creditors (e.g., trade creditors). MCL 500.8142(1)(e).
- Class 6: Claims of any state or local government, with certain limitations applicable to claims involving penalty or forfeiture. MCL 500.8142(1)(f).

- Class 7: Claims filed late or any other claims other than claims under subdivisions (h) and (i). MCL 500.8142(1)(g).
- Class 8: Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. MCL 500.8142(1)(h). The Liquidator received no claims that fall within this class.
- Class 9: Claims of [former] shareholders or other owners. MCL 500.8142(1)(i). The Liquidator received no claims that fall within this class.

20. The Liquidator further requests the Court to formally order the requirement in MCL 500.8142(1) that “[e]very claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment.”

#### **APPROVAL OF CLAIM RECOMMENDATIONS**

21. MCL 500.8143(1) provides:

As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with his or her recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any.

MCL 500.8143(2) further provides that “[t]he court may approve, disapprove, or modify the report on claims by the liquidator.”

22. The Liquidator has resolved all claims consistent with the above-described claims determination process and Chapter 81 of the Michigan Insurance Code, and now presents his claim recommendations in the attached Exhibits F through M. Pursuant to MCL 500.8143(2), the Liquidator asks the Court to approve his claim recommendations set forth in these Exhibits, which are summarized as follows:

- Exhibits F through J list the Class 2 claims that have been adjudicated and are recommended for approval in the total amount of \$4,209,532.45. Exhibit F is the Wayne County Pluscare claims recommended for approval. Exhibit G is the Wayne County ABW claims recommended for approval. Exhibit H is the Platinum Health claims recommended for approval. Exhibit I is the MICHild

claims recommended for approval. Exhibit J is the Ultimed member claims recommended for approval.

- Exhibit K lists the Class 5 claims that have been received by the Liquidator, which total \$809,656.03. Due to the unlikelihood of any distribution to these claimants, the Class 5 claims have not been fully adjudicated nor has the Liquidator determined any final, approved amount for these claims. As required by statute, Class 5 claimants were sent a determination letter preliminarily denying their claims due to lack of sufficient assets in the Ultimed Liquidation Estate. For this same reason, the Liquidator currently recommends no distribution to Class 5 claimants.
- Exhibit L lists the Class 6 claims that have been received by the Liquidator, which total \$93,348.86. Due to the unlikelihood of any distribution to these claimants, the Class 6 claims have not been fully adjudicated nor has the Liquidator determined any final, approved amount for these claims. As required by statute, Class 6 claimants were sent a determination letter preliminarily denying their claims due to lack of sufficient assets in the Ultimed Liquidation Estate. For this same reason, the Liquidator currently recommends no distribution to Class 6 claimants.
- Exhibit M lists the Class 7 (late-filed) claims that have been received by the Liquidator, which total \$18,446.80. Due to the unlikelihood of any distribution to these claimants, the Class 7 claims have not been fully adjudicated nor has the Liquidator determined any final, approved amount for these claims. As required by statute, Class 7 claimants were sent a determination letter preliminarily denying their claims due to lack of sufficient assets in the Ultimed Liquidation Estate. For this same reason, the Liquidator currently recommends no distribution to Class 7 claimants.

As stated, the Liquidator received no claims falling within Classes 3, 4, 8, or 9.

#### **AUTHORITY TO DISTRIBUTE LIQUIDATION ESTATE ASSETS**

23. As of September 30, 2008, the Ultimed Liquidation Estate has assets in the amount of \$97,438. Exhibit N. Based on conservative estimates, the Liquidator proposes to retain \$25,183 to pay the Class 1 final administrative costs and expenses of the Estate, leaving \$72,255 that the Liquidator now seeks authority to distribute (the "Distribution Amount").

24. Based on the amounts of the Liquidator's claim recommendations, as set forth in Exhibits F through M and summarized above, the Liquidator proposes a pro-rata distribution of the Distribution Amount to all approved Class 2 claims.

25. Any additional Estate assets that the Liquidator recovers, and that are not required to fund Class 1 administrative costs and expenses, would be distributed in the future following the filing of a Petition and this Court's approval. At this time, the Liquidator anticipates that in the unlikely event that such additional assets are recovered, they would be used only to increase the pro rata payment to Class 2 claimants, with all Class 5, 6, and 7 claimants still receiving no distribution.

26. MCL 500.8144 provides that the Liquidator shall pay distributions, under the Court's direction, "in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims." The Liquidator believes that his proposed pro-rata distribution to Class 2 claimants assures the proper recognition of priorities and is necessary to complete this liquidation. Moreover, the proposed distribution will not adversely impact unliquidated and undetermined claims because all claims belonging to the class that would be the likely recipient of any future distribution (i.e., the over \$7 million of Class 2 claims that remain unpaid) are already liquidated and determined.

27. Claimants in Classes 5, 6, and 7 have been informed that they are unlikely to receive any distribution for their claims. The Liquidator will retain records, however, that will permit adjudication of such claims and pro rata distributions to be made to these claimants, as appropriate, should sufficient funds become available.

28. The Liquidator additionally requests that the Court impose the following requirements, procedures, and/or conditions upon the proposed pro-rata distribution to Class 2 claimants.

29. The Liquidator recommends and asks the Court to approve a Fifty Dollar (\$50.00) fine for all claimants failing to provide a complete, accurate form W-9 for the applicable tax year, in anticipation of Internal Revenue Service ("IRS") penalties that will be incurred by the Ultimeid Liquidation Estate for submitting incorrect tax identification data to the IRS. The Liquidator has sent to all claimants that are expected to receive a distribution a request that they submit an updated W-9 form. The W-9 form provides current information regarding a payee's name, address, type of business, and tax identification number. The Liquidator's correspondence warned that claimants would be penalized for failure to return an updated W-9 form to the Liquidator. Attached as Exhibit O is a list of claimants from which the Estate has not received an updated W-9 form that would be subject to the referenced fine as of the date of filing of this Petition.

30. The Liquidator has been unable to locate and/or has received undeliverable mail returned from the United States Post Office for a number of Class 2 medical provider and member claimants that would otherwise be entitled to receive the proposed distribution. The list of these providers and members is attached as Exhibit P. The Liquidator has made all reasonable efforts to secure current address information for these claimants without success. Accordingly, the Liquidator requests, pursuant to MCL 500.8145, that the Court order that these or any other funds that the Liquidator has been unable to distribute at the time the Liquidator is discharged will be treated as unclaimed funds and shall be deposited with the State Treasurer, who shall distribute the funds upon satisfactory proof of right to it or, if unclaimed after six (6) years, such funds shall escheat to the State.

31. During the process of finalizing payments to claimants, the Liquidator may re-review certain claim materials to verify that the Estate is not double-paying any claim, particularly those filed by medical providers. To the extent the Liquidator identifies such duplicate claims during the process of finalizing claim payments, the Liquidator asks the Court to order that the Liquidator shall reduce the payment to the relevant claimant by the amount of the duplicate claim. The Liquidator will specifically inform the relevant claimant of the reduction, including as applicable the member name, date of service, and service provided, as well as identifying information for the claim that is being paid. The Liquidator asks the Court to order that any dispute arising from an adjustment of this type be facilitated. The Liquidator further asks the Court to order that any such matter that cannot be resolved through facilitation be scheduled for a settlement/scheduling conference with the Court, which will, if necessary, set an appropriate schedule for resolving the matter.

**SERVICE OF PETITION AND ANY RESULTING ORDER**

32. Due to the limited assets remaining in the Ultimed Liquidation Estate and the prohibitive cost associated with providing personalized notice to the thousands of creditors that have filed Proofs of Claim, the Liquidator further requests that the Court authorize and ratify service of this Petition and any resulting Order by:

- (a) Posting a copy of the Petition and any resulting Order on the OFIR website, [www.michigan.gov/ofir](http://www.michigan.gov/ofir), under the section "Who We Regulate" and the subsection "Ultimed"; and
- (b) Serving a copy of the Petition and any resulting Order, via U.S. First Class Mail, on Ultimed's five largest creditors (by approved claim amount), which are: (1) The Henry Ford Medical Group, (2) CVS Pharmacy, (3) The City of Detroit Fire Department, (4) Rite Aid Corporation; and (5) The Regents of the University of Michigan.

Service in this manner is reasonably calculated to give interested parties (namely, Ultimed's creditors) actual notice of these proceedings and an opportunity to be heard, and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Liquidator respectfully requests this Court to enter an Order: (1) Approving the Liquidator's claim recommendations, pursuant to MCL 500.8143(2); (2) Establishing the priority of distribution of claims from the Ultimed Liquidation Estate, consistent with MCL 500.8142; and (3) Authorizing the Liquidator to distribute liquidation estate assets to certain claimants, pursuant to MCL 500.8144.

Respectfully submitted

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", is written over a horizontal line.

Christopher L. Kerr (P57131)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Insurance & Banking Division  
Attorneys for Petitioner  
P.O. Box 30754  
Lansing, Michigan 48909  
(517) 373-1160

Dated: November 13, 2008



STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

KENNETH M. ROSS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
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ULTIMED HMO OF MICHIGAN, INC.,  
a Michigan health maintenance organization,

**IN LIQUIDATION**

Respondent.

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**PROOF OF SERVICE**

The undersigned certifies that on November 13, 2008, she served a copy of Liquidator's Petition for an Order Approving the Liquidator's Claim Recommendations, Establishing Priority of Distribution of Claims, and Authorizing the Distribution of Liquidation Estate Assets by: (1) depositing same in a United States Postal Depository in the city of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed to Ultimed HMO of Michigan, Inc.'s five largest creditors, which are:

CVS Pharmacy  
AT: Mr. Skip Buehl  
Third Party Financial  
One CVS Drive  
Woonsocket, RI 02895


City of Detroit Fire Department  
AT: Mr. Gary Kelly  
Dept. 153801  
P.O. Box 67000  
Detroit, MI 48267-1538

Rite Aid Corporation  
AT: Mr. William Wolfee, Vice President  
30 Hunter Lane  
Camp Hill, PA 17011

University of Michigan Regents  
AT: Regina Ozias  
Paralegal for Billing and Third Party  
Collections  
Room 1211  
3621 S. State Street  
Ann Arbor, MI 48108-1652

Henry Ford Medical Group  
AT: Mr. James Connelly  
Chief Medical Officer  
P.O. Box 67-0884  
Detroit, MI 48267

and (2) Posting the Petition on the Office of Financial and Insurance Regulation website.

  
\_\_\_\_\_  
Carol Simon